

### **DETAILED ACTION**

This application, filed on 10/12/2006, is a national stage entry of PCT/EP05/02566, filed on 2/10/2005.

#### **Priority**

A claim for foreign priority has been made to 04356017.6, filed on 2/12/2004, as well as to Provisional Application 60/636898, filed on 12/17/2004.

#### **Terminal Disclaimer and Withdrawal of Obviousness Type Double Patenting**

##### **Rejection**

1. The terminal disclaimer filed on 1/28/2010 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of co-pending application No. 10/587802 has been reviewed and is accepted. The terminal disclaimer has been recorded. Therefore, the rejection of claims 9-17 and 19 for obviousness type double patenting over the claims of application 10/587802 is withdrawn.

##### **Response to Remarks**

2. Applicant's arguments, filed 1/28/2010, with respect to the rejection of claims 9-17 and 19 under 35 USC § 103(a) have been fully considered and are persuasive. The rejection of claims 9-17 and 19 has been withdrawn.

3. New claim 20 has been added by the Applicants. Entry of this claim is allowed, as it does not introduce new matter. As the rejections under 35 USC § 103(a) and for

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obviousness type double patenting have been withdrawn, the claims 9-17, 19, and 20, are found to be free of the prior art. An examiner's amendment and statement of reasons for allowance follows.

#### **Withdrawal of Restriction Requirement and Rejoinder of Method Claim**

4. In a telephone conversation with the Applicants' attorney, Paul Grandinetti, on 4/14/2010, a rejoinder of withdrawn claim 18 was requested. As such, the restriction requirement is withdrawn, and claim 18 is rejoined with the composition claims.

#### **Examiner's Amendment**

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Applicants' attorney, Paul Grandinetti, on 4/14/2010.

Please amend the claims as follows:

6. For claim 18, line 1, *after* "for", and *before* "controlling", **delete** "preventively or curatively".

#### **Statement of Reasons for Allowance**

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7. The following is a statement of reasons for the indication of allowable subject matter: there exists no prior art which teaches or suggests the composition comprised of the (a) claimed pyridinylethylbenzamide compounds and (b) compounds capable of inhibiting spore germination or mycelium growth by acting on different metabolic routes, in which the weight ratio of (a)/(b) is from 0.01 to 20. The closest prior art is Cooke et. al., WO 2001/11965 publication, and Wegmann et. al., WO 2003/041501 publication, both previously of record. Cooke et. al. teaches a broad genus of compounds which includes the claimed pyridinylethylbenzamide compounds, as fungicidal agents. Wegmann et. al. teaches pyridinylmethylbenzamide compounds that can be combined with iprovalicarb, which inhibits fungal mycelium growth. However, it would not have been considered prima facie obvious to one of ordinary skill in the art to combine the pyridinylethylbenzamide compounds taught by Cooke with agents which inhibit mycelium growth, such as iprovalicarb, because the Applicants have presented data which distinguishes the pyridinylethyl- and pyridinylmethylbenzamide compounds from each other. The Applicants, in the reply filed on 1/28/2010, have presented data which shows that at 330 ppm, the pyridinylethylbenzamide compound is active against species such as *Botrytis cinera* and *Alternaria brassicae*, while the pyridinylmethylbenzamide compound is completely inactive under the same conditions. As the pyridinylethyl- and pyridinylmethylbenzamide compounds are non-obvious, claims 9-20 are found to be novel and non-obvious over the prior art.

#### **Information Disclosure Statement**

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8. The information disclosure statement (IDS) submitted on 1/28/2010 was filed after the mailing date of the non-final action on 11/24/2009. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

### **Conclusion**

9. Claims 9-20 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH PIHONAK whose telephone number is (571)270-7710. The examiner can normally be reached on Monday-Thursday 8:00 AM - 6:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (571)272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Shengjun Wang/  
Primary Examiner, Art Unit 1627

S.P.